

FILED  
U.S. DISTRICT COURT  
W.D.N.Y. BUFFALO

2006 DEC 22 PM 12:11

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

EILEEN SYMS, Individually and as  
Executrix of the ESTATE OF JOHN SYMS,  
THE SOMERSET GROUP, INC.,  
UNITOOL CORPORATION,  
LEW-PORT CONSTRUCTION CORPORATION,  
C&S MACHINERY CORPORATION,  
SYMS EQUIPMENT RENTAL CORPORATION, and  
LEW-PORT ELECTRICAL CORPORATION,

Plaintiffs,

v.

OLIN CORPORATION,

Defendant.

ORDER

Civil No.: 04-CV-316A(F) ✓

---

EILEEN SYMS, Individually and as  
Executrix of the ESTATE OF JOHN SYMS,  
THE SOMERSET GROUP, INC.,  
UNITOOL CORPORATION,  
LEW-PORT CONSTRUCTION CORPORATION,  
C&S MACHINERY CORPORATION,  
SYMS EQUIPMENT RENTAL CORPORATION, and  
LEW-PORT ELECTRICAL CORPORATION,

Plaintiffs

v.

UNITED STATES DEPARTMENT OF DEFENSE,  
DONALD RUMSFELD, in his official capacity as  
SECRETARY OF DEFENSE  
UNITED STATES DEPARTMENT OF THE ARMY  
THOMAS E. WHITE, in his official capacity as  
SECRETARY OF THE ARMY  
UNITED STATES DEPARTMENT OF AIR FORCE,  
JAMES G. ROCHE, in his official capacity as

---

ORDER

Civil No.: 00-CV-732A(F)

---

SECRETARY OF THE AIR FORCE,  
UNITED STATES NUCLEAR REGULATORY  
COMMISSION,  
RICHARD MESERVE, in his official capacity as  
CHAIRMAN of the UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
THE UNITED STATES OF AMERICA

---

Defendants.

---

ORDER

On September 15, 2006, this Court entered an Order that adopted the recommendations previously made by Magistrate Judge Foschio and dismissed all causes of action asserted under New York law in both of these cases.

In the interests of disposing of Case Number 04-CV-316A(F) ("*Syms II*"), Magistrate Judge Foschio issued an additional Report and Recommendation on October 25, 2006 ("Report and Recommendation") stating that these cases are no longer consolidated and recommending that the Clerk of the Court enter judgment in *Syms II* in favor of the defendants and close the case.

Plaintiffs filed objections to the Report and Recommendation. Defendant Olin Corporation ("Olin") also filed objections to the Report and Recommendation on the sole grounds that the proposed procedure would result in confusion about the status of final judgments in these cases and could require an immediate appeal in *Syms II* before resolution of all related claims in Case Number 00-CV-732A(F) ("*Syms I*"). Defendant Olin therefore moved this Court to reconsider the Court's Order of September 15, 2006 so that the Court could dispose of *Syms II* on procedural grounds that would not necessitate another piecemeal appeal in the case. Neither the government defendants nor the plaintiffs oppose the relief requested by Olin.

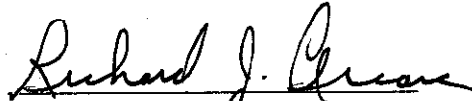
This Court finds that amendment of its September 15, 2006 Order is appropriate to modify the grounds for disposition of the state law claims in *Syms II*. Additionally, this Court finds that, as recommended by Magistrate Judge Foschio, *Syms I* and *Syms II* should no longer be consolidated; however, because *Syms II* is duplicative of *Syms I*, *Syms II* should be dismissed solely under the "first-filed" doctrine. *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000) ("As part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit"); *see also, Kellen Co. v. Calphalon Corp.*, 54 F. Supp.2d 218, 221 (2d Cir. 1999).

Upon consideration of Magistrate Judge Foschio's Report and Recommendation, and the objections and responses thereto, and Olin's Motion for Reconsideration,

It is HEREBY ORDERED that Case No. 04-CV-316A(F) and Case No. 00-CV-732A(F) are no longer consolidated.

It is FURTHER ORDERED that Olin's Motion for Reconsideration of this Court's September 15, 2006 Order is GRANTED and this Court's September 15, 2006 Order is hereby vacated and declared void insofar as it applies to Case No. 04-CV-316A(F). That order is not modified in any way insofar as it applies to Case No. 00-CV-732A(F).


It is FURTHER ORDERED that all of the claims in Case No. 04-CV-316A(F) are DISMISSED on the sole grounds that those claims are duplicative of the prior-filed claims in Case No. 00-CV-732A(F). The Clerk of the Court is hereby directed to enter judgment in favor of Olin on those claims and close Case No. 04-CV-316A(F).



Honorable Richard J. Arcara  
Chief Judge  
United States District Court

DATED: Dec. 21, 2006

ATTEST: A TRUE COPY  
U.S. DISTRICT COURT, WDNY  
RODNEY C. EARLY, CLERK

RV:   
Clerk

Original Filed 12/22/06